

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA )  
 )  
 ) Plaintiff )  
 )  
 Vs. )  
 )  
 Nadine J. Griffin )  
 ) Defendant )

CASE NO. CR-05-10175-WGY

**DEFENDANT'S OBJECTION TO  
ARRAIGNMENT BY MAGISTRATE  
JUDGE: NO CONSENT GIVEN**

COMES NOW, Nadine J. Griffin, hereinafter "defendant," filing this formal objection to being arraigned by magistrate judge Royce London Alexander pursuant to Federal Rules of Criminal Procedure (FRCrP) 5(c), Federal Rules of Civil Procedure (FRCP) 72(a), and 28 U.S.C. § 631 through 636 et. seq..

1. The following rule does not provide an exemption under any circumstances for a magistrate is allowed to arraign cases that he/she has no jurisdiction to hear. Rules 5. Provides for the following:

**Federal Rules of Criminal Procedure (FRCrP) Rule 5(c). Offences Not Triable by the United States Magistrate Judge. *If the charge against the defendant is not triable by the united states magistrate judge, the defendant shall not be called upon to plead.*** The magistrate judge shall inform the defendant of the complaint against the defendant and of any affidavit filed therewith, of the defendant's right to retain counsel or to request the assignment of counsel if the defendant is unable to obtain counsel, and of the general circumstances under which the defendant may secure pretrial release.

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2. The rules further denotes the term "shall" as if to imply a mandatory element of that rule. In support of Rule 5, the Defendant points out Rule 58. Petty offences and other misdemeanors. (a.)(3)(A) Arraignment. Plea Before a Magistrate Judge. "A magistrate judge may take the defendant's plea in a petty offense. In every other misdemeanor case, a magistrate judge may take the plea only if the defendant consents either in writing or on the record to be tried before a magistrate judge and specifically waives trial before a district judge.

3. With full consideration of the issues before this Court, the defendant does not consent to being arraigned by a magistrate judge and shall not enter a plea (sic), does not consent to a plea being entered on my behalf. A magistrate judge does not have jurisdiction to arraign felony cases without the expressed consent of the parties, nor can the district judge confer jurisdiction of the same. "District court cannot by rule confer on magistrate jurisdiction not permitted by statute; neither can consent of parties . . ." United Steel Workers of America, AFL-CIO v. Bishop, C.A.5 (Ala.) 1979, 598 F.2d 408.

4. The Courts have stated; "Continued and vigilant supervision of U.S.C.A. Const. Art. III judges is essential to the integrity of system which permits magistrates to conduct civil trials and enter final judgment with consent of all parties, and judges must be careful to guard against any compulsion to induce consent through imposition of cost, delays or any other penalties that would be incompatible with conclusion that consent of parties is essential to constitutionality of this section allowing magistrates to conduct trials (Cited Omitted)."

5. A magistrate judge's scope of duties are fully restricted to compliance and consent of the parties applicable to petty offences having waived their rights allowing a magistrate judge to

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2 adjudicate an issue of law, as such is not applicable in felony cases. The Federal Magistrate Act  
3 accordingly " . . . does not grant to judges of the United States district courts authority to  
4 delegate to magistrate as "additional duty" power to preside over selection of jury in felony  
5 cases." *U.S. v. Ford* C.A.5 (Tex.) 1987, 824 F.2d 1430, certiorari denied 108 S.Ct. 741, 484 U.S.  
6 1034, 98 L.Ed.2d 776.

7  
8 6. United States magistrate judges are former national park and other commissioners (28 USC  
9 § 631-639) authorized to hear misdemeanor cases in the United States jurisdiction (18 USC §  
10 3401), within the framework of regulations which utilize the United States Magistrate system  
11 (28 CFR, Part 52.01 et seq., 32 CFR, Part 1290.1 et seq., and 43 CFR Part 9260.0-1), and are not  
12 authorized to take pleas in felony matters with the expressed consent of the parties as referenced  
13 supra.

14 The jurisdiction of magistrate judges is codified at 28 USC § 631 through 636. - Jurisdiction,  
15 powers, and temporary assignment.

16 (a) Each United States magistrate judge serving under this chapter shall have  
17 within the territorial jurisdiction prescribed by his appointment -

18 (1) all powers and duties conferred or imposed upon United States commissioners  
19 by law or by the Rules of Criminal Procedure for the United States District  
20 Courts;

21 (2) the power to administer oaths and affirmations, issue orders pursuant to  
22 section 3142 of title 18 concerning release or detention of persons pending trial,  
23 and take acknowledgements, affidavits, and depositions;  
24

(3) the power to conduct trials under section 3401, title 18, United States Code, in conformity with and subject to the limitations of that section;

(4) the power to enter a sentence for a petty offense; and

(5) the power to enter a sentence for a class A misdemeanor in a case in which the parties have consented.

(b) (1) Notwithstanding any provision of law to the contrary -

(A) a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for post-trial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(3) *A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.*

(4) Each district court shall establish rules pursuant to which the magistrate judges shall discharge their duties.

(c) Notwithstanding any provision of law to the contrary -

(1) Upon the consent of the parties, a full-time United States magistrate judge or a part-time United States magistrate judge who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate judge may exercise such jurisdiction . . .”

(2) If a magistrate judge is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate judge to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate judge may again advise the parties of the availability of the magistrate judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to

magistrate judges shall include procedures to protect the voluntariness of the parties' consent.

Accordingly, the defendant does not give consent, verbal, implied, direct, written or otherwise, that would allow a magistrate judge to adjudicate the matter regarding both dispositive and nondispositive issues. See Roell v. Withrow – U.S. --, 123 S. Ct. 1696, 155 L. Ed. 2d 775, 784 (2003)

**WHEREFORE;** Arraignment of felony cases by magistrate judges, according to both statute and Court rule can only be done by waiver and consent of the parties, and the defendant neither waives nor consents to such actions. The defendant moves to be arraigned by a district Court Article III judge for purposes of these proceedings and any future proceedings herein adjudicated.

Dated this 18<sup>th</sup> day of July 2005.

Signature: 

Nadine J. Griffin  
C/o 13799 Park Blvd. North #244  
Seminole, Florida [33776-3402]

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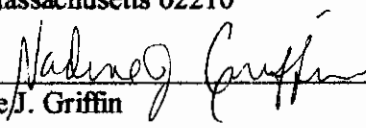
BY MAGISTRATE JUDGE

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2 I, Nadine J. Griffin, certify that July 20, 2005, I deposited Certified Mail Article #:  
3 \_\_\_\_\_, mailed a true and correct copy of the above and  
4 foregoing objection to arraignment by magistrate to: Christopher Maietta, at:  
5

6 Christopher Maietta  
7 United States Attorney's Office  
8 1 Courthouse Way  
9 Suite 9200  
10 Boston, Massachusetts 02210

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